

# Post-2025 AMAs Committee Meeting

Governor's Water Augmentation Innovation & Conservation Council

November 9, 2021







- **The Co-Chairs have identified five proposals to present to the Governor's Water Council on November 30<sup>th</sup>.**
- **All other ideas for solutions are to continue to be discussed and developed in 2022**
- **Criteria used by Co-Chairs for selecting the five proposals –**
  - Address more than one challenge or opportunity
  - Gain general overall support from the Committee
  - Politically viable in 2022 Legislative Session
- **Today's Meeting – Determine overall support from the Committee to forward proposals to GWAICC**





# 2021 Package of Post-2025 AMAs Proposals

- Improve the Regulatory Process for Recharge & Recovery
- Express Support for Further Discussions Refining Arizona's Approach to Augmentation
- Remove WaterBUD Restrictions
- Accelerate ADEQ's Development of Administrative Rules for Direct Potable Reuse
- Review ADWR's Methodology for Reviewing Certificate and Analysis of AWS Applications in Commingled Distribution System





## **Improve the Regulatory Process for Recharge & Recovery**

- Stakeholders have encountered regulatory obstacles with new and existing recharge facilities and with recovery.
- ADWR has started to address some of these issues.
- ADWR would initiate a review of its recharge and recovery program with stakeholder engagement.

## **Express Support for Further Discussions Refining Arizona's Approach to Augmentation**

- Continued discussions in the Long-Term Water Augmentation Committee refining Arizona's strategic approach to augmentation.





## **Remove WaterBUD Restrictions**

- Current statutes prevent the accrual of Long-Term Storage Credits for certain entities that are pumping groundwater.
- Removing all or part of "WaterBUD" would allow entities to accrue or buy LTSC regardless of their groundwater pumping.

## **Accelerate ADEQ's Development of Administrative Rules for Direct Potable Reuse**

- Provide resources to ADEQ to fast track updating the Arizona Administrative Code on Purified Water for Potable Use.
- Demonstrate stakeholder support and community benefit for direct potable reuse
- Ensure regulations are in place so public and private water providers have a clear path for developing this resource.





## **Review ADWR's Methodology for Reviewing Certificate and Analysis of AWS Applications in Commingled Distribution System**

- ADWR to consider enabling a developer to provide water to a water provider that can then serve that water through the provider's mixed system without regard to historic volumetric accounting policy for AWS purposes.

ADWR Presentation on Comingled Delivery Systems  
in the Assured Water Supply (AWS) Program



# Assured Water Supply: Commingled Systems Containing Groundwater

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Meeting of Post-2025 AMAs Committee of the GWAICC  
November 9, 2021

# Assured Water Supply (AWS) Program

- The program was designed to provide an important consumer protection to homebuyers, and to sustain the state's economic health by preserving groundwater resources and promoting long-term water supply planning.
- The program requires that, in order to obtain plat approval and sell lots for homes, a developer demonstrate that the proposed subdivision's water supply will be physically, continuously, and legally available to serve the subdivision for 100 years.
- The State's guiding principle in assessing potential changes is to uphold the consumer protection and water sustainability objectives of the program.



# AWS and Groundwater Physical Availability

- Physical availability for groundwater requires, among other things, a showing that the groundwater will be withdrawn from depths that do not exceed a certain depth to water level within the applicable AMA. A.A.C. 12-15-716(B)(2).
- Additionally, pursuant to A.A.C. 12-15-716(B)(3), the projected depth-to-static water level must take into account existing groundwater uses, as well as future uses associated with approved AWS determinations.



# Commingled Systems

An applicant for an analysis or certificate relying on water delivered through a provider's commingled system must demonstrate the physical availability of any groundwater delivered through the system, even if the applicant or water provider brings a new non-groundwater supply to the system in a volume equal to the applicant's demand.





# Commingled Systems

Rationale: Absent a written agreement to the contrary (“exclusivity agreement”), the water provider would not be required to deliver the non-groundwater supply only to the proposed subdivision if there were a shortage of the groundwater delivered through the system.

Homeowners in the new subdivision would then bear risks of groundwater shortage designed to be avoided by the AWS program.



# Commingled Systems

- Stakeholders have requested more flexibility with respect to the requirements to demonstrate the physical availability of groundwater supplies within a commingled system.
- Stakeholders seek opportunities to bring new renewable supplies, LTSCs, or imported groundwater, (“new supply”) into a provider’s system for delivery to new development.
- ADWR would like to facilitate these efforts while maintaining the consumer protections the AWS program is designed to provide.

# ADWR Concept

ADWR proposes to allow an applicant to avoid requirements to demonstrate the physical availability of groundwater in a commingled system if:

- the applicant or the water provider brings in a new supply in a sufficient quantity to serve the new development for 100 years, AND
- the applicant enters into an exclusivity agreement, whereby the water provider would agree to deliver the new supply only to the new development in times of groundwater shortage (the agreement must be legally enforceable and the provider must be able to physically implement the agreement), AND
- the addition of the new development would not reduce the volume of groundwater that must meet the consistency with management goal requirement for any other groundwater-based certificates within the same distribution system, for instance by reducing the replenishment obligation of any CAGR member lands.



# ADWR Concept

The Arizona Corporation Commission (ACC) has constitutional power to “prescribe just and reasonable classifications to be used and just and reasonable rates and charges to be made and collected, by public service corporations within the State for service rendered therein....” *Tonto Creek Estates Homeowners Ass'n v. Arizona Corp. Comm'n*, 177 Ariz. 49, 58, 864 P.2d 1081, 1090 (App. 1993) (holding that ACC had authority to require an HOA to provide non-discriminatory service within its service area).

Before issuing an analysis or certificate, to ensure enforceability of an exclusivity agreements with a private water company, ADWR would need written assurance from the ACC (either through a generally applicable rule or individual approval) that the exclusivity agreement is acceptable to the ACC.

# **Other Proposals Identified by Committee Members to be further discussed in 2022**

- **Prescott AMA Exempt Wells Concepts**
- **Address the Subdividing Loophole in AWS Program for development that doesn't require replenishment**
- **Establish a Cut-to-the-Aquifer for Annual Storage & Recovery outside of AOI**
- **Encourage Urban Development on Agricultural Lands**
- **Evaluate the allowable groundwater pumping depth in the AWS Program, currently ~ 1,000' below land surface**
- **Facilitate Groundwater Transfers**
- **Recovery of LTSC stored in the Tonopah Area**
- **Identification of potential aquifer recharge locations for preservation**
- **Limitations on Groundwater Withdrawals**
- **Increase existing fee or create a new fee for Groundwater Withdrawals that then is used to assist with replenishing groundwater pumping**
- **Limit Unreplenished Pumping in the Industrial Sector**
- **Revisit Conservation Requirements in Management Plans**
- **Evaluate the AOHI associated with Groundwater Savings Facilities**
- **Require CAGRDR Replenishment within the AOI of Development**
- **Review ADWR's Assured Water Supply Model Run Assumptions**
- **Promote smart tax policy to decrease groundwater mining in the AMAs**





## Next Steps

- Nov 30<sup>th</sup> – Present five proposals to the GWAICC
- 2022 – Continue discussion of other Post 2025 ideas